



U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 SIXTH AVENUE
SEATTLE, WASHINGTON 98101

7/10/89

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RECEIVED
JUL 11 1989

REPLY TO
ATTN OF: SO-125

Warren Derbidge, Esq.
Assistant U.S. Attorney
Rm. 328 Federal Bldg., Box 037
550 W. Fort Street
Boise, Idaho 83724

OFFICE OF REGIONAL COUNSEL
EPA - REGION X

Re: U.S. v. Warren Bingham, George Drexler, Thomas Drexler, and
Alan Pickett. Civil Case No. 88-3011.

Warren
Dear Mr. Derbidge,

Enclosed are the necessary documents to support an Order of Default against defendants George Drexler, Thomas Drexler and Alan Pickett, for their failure to pay the civil penalty assessed by ALJ Yost by Order, dated October 21, 1985. As you know, the remaining defendant Warren Bingham has filed an Answer to the Complaint and no default or other relief is sought by this Motion against him.

The named parties have been served with the Complaint and Summons. Thomas Drexler was served by certified mail on February 2, 1988, Alan Pickett and George Drexler were personally served on April 13, 1988. As of the date of this letter, none of the above parties have pleaded or answered the Complaint.

Sincerely,

Monica Kirk
Assistant Regional Counsel

Enclosures

USEPA RCRA



3009314

DONALD A. CARR
Acting Assistant Attorney General

ROBERT FOSTER
Environmental Enforcement Section
Lands and Natural Resources Division
U.S. Department of Justice
P.O.Box 7611, Ben Franklin Station
Washington, D.C., 20044
(202) 633-1448

WARREN DERBIDGE
Assistant U.S. Attorney
Rm. 328 Federal Bldg., Box 037
550 W. Fort Street
Boise, Idaho 83724
(208) 334-1211

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	CIVIL NO. 88 - 3011
)	
v.)	
)	
WARREN BINGHAM; GEORGE W.)	FINDINGS OF FACT AND
DREXLER, THOMAS DREXLER; and)	
W. ALAN PICKETT, Defendants.)	CONCLUSIONS OF LAW

These findings and conclusions are entered in order to satisfy Rule 52 of the Federal Rules of Civil Procedure ("FRCP"). The records and files in this cause plus the affidavit of United States Environmental Protection Agency ("U.S. EPA") attorney, Monica Kirk, demonstrate to the Court that the Defendants George W. Drexler, Thomas Drexler, and W. Alan Pickett have defaulted in this action and that the Plaintiff has a liquidated just claim against them jointly and severally, based upon the U.S. EPA administrative civil penalty order ("Penalty Order") entered by Administrative Law Judge Yost, on October

21, 1985, for the principal sum of \$4,500.00 plus interest thereon as a debt of record owed to the United States at the rate of 9% per annum (0.00025 or \$33.75 per day) from December 22, 1985 to the date of judgment entry herein. Based on such showing and the failure of the said Defendants to plead herein, the Court now makes and enters the following:

FINDINGS OF FACT

1. Paragraphs 1, 3, 4, 5, 7 through 11, 13 through 15, and 16 through 17 of the Complaint on file are here incorporated by this reference, and those assertions are hereby adopted as the findings of the Court.

2. The Defendants were duly served with Summons and Complaint. George Drexler and W. Alan Pickett were personally served on April 13, 1988, and Thomas Drexler was served by certified mail on February 2, 1988 (see attached). These Defendants have been defaulted for failure to plead, as provided in Rule 55 of the FRCP.

3. Exhibit 3 to the Complaint is a true depiction of the text of the Penalty Order entered against the said three Defendants. The unpaid Penalty Order should have been paid in full in its principal sum of \$4,500.00 on December 22, 1985, but no part thereof has been paid and interest thereon has accrued since that date at 9% per annum (i.e., 0.00025 or \$33.75 per calendar day).

4. There is due, owing, and unpaid on the said U.S. EPA order as of this date, the principal sum of \$4,500.00 plus the additional sum of \$_____ interest accrued to this date on the

1 principal sum at the rate of 9% per annum for a total amount due of
2 \$_____.

3 5. There does not appear any reason why a delay should
4 occur in the entry of a separate judgment, jointly and severally,
5 against the Defendants George W. Drexler, Thomas Drexler, and W. Alan
6 Pickett for the total amount specified in paragraph 4 above. An
7 express determination that there is no just reason for any such delay
8 is hereby made, and an express direction should be given to enter such
9 a separate judgment as provided for in Rule 54 of the FRCP.

10
11 **CONCLUSIONS OF LAW**

12 6. This Court has jurisdiction in this cause of the
13 persons of the Defendants George W. Drexler, Thomas Drexler, and W.
14 Alan Pickett, and of the subject matter of this action.

15 7. The Penalty Order attached as Exhibit 3 to Complaint is
16 a final Agency action.

17 8. The Defendants George W. Drexler, Thomas Drexler and W.
18 Alan Pickett are jointly and severally liable to the Plaintiff herein
19 on the Penalty Order in the total sum of \$_____ together with
20 costs and disbursements herein to be taxed, and judgment therefor
21 should be entered.

22
23 **DATED:** _____

24 **UNITED STATES DISTRICT JUDGE**

United States District Court

DISTRICT OF IDAHO

FILED
1988 APR 20 PM 3:18
JERRY L. CLAPP

UNITED STATES OF AMERICA,

Plaintiff,

ANOTHER SUMMONS IN A CIVIL ACTION

V.

CASE NUMBER: 88-3011

WARREN BINGHAM, GEORGE W. DREXLER,
THOMAS DREXLER, AND W. ALAN PICKETT

TO: (Name and Address of Defendant)

RECEIVED
MAR 29 11 51 AM '88
DISTRICT OF
IDAHO

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Jeffery W. Ring
Assistant United States Attorney
U. S. Attorney's Office
Box 037 Federal Building
Boise, ID 83724

an answer to the complaint which is herewith served upon you, within twenty (20) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JERRY L. CLAPP

CLERK

Phyllis C. Case
BY DEPUTY CLERK

DATE

March 25, 1988

RETURN OF SERVICE

Service of the Summons and Complaint was made by me ¹	DATE 4/13/88
NAME OF SERVER Dennis C Sivak	TITLE CIVIL INVESTIGATOR

Check one box below to indicate appropriate method of service

☒ Served personally upon the defendant. Place where served: George Dwyer at 4610 N 30th Tacoma WA
Alan Pickett at 3003 TAYLOR WAY TACOMA WA

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other (specify): _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL
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DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on

4/13/88
Date

Signature of Server

Dennis C Sivak

FTS 399-0199

Address of Server

EPA, 1200 Sixth Ave, Seattle WA 98101

United States District Court

FILED
DISTRICT OF
MAR 25 PM 12:30

IDAHO

UNITED STATES OF AMERICA,

Plaintiff

DISTRICT OF IDAHO
JERRY L. CLAPP, CLERK

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER:

CIV 88 3011

WARREN BINGHAM, GEORGE W. DREXLER,
THOMAS DREXLER, and W. ALAN PICKETT,

Defendants

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)

Jeffery W. Ring
Assistant United States Attorney
U. S. Attorney's Office
Box 037 Federal Building
Boise, Idaho 83724

an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JERRY CLAPP

CLERK

FEB 5 1988

DATE

Anne L. Jache
BY DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and Complaint was made by me¹

DATE

NAME OF SERVER

TITLE

Check one box below to indicate appropriate method of service

- ☐ Served personally upon the defendant. Place where served: _____
- ☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____
- ☐ Returned unexecuted: _____
- ☐ Other (specify): Warren Bingham and Thomas Drexler served

STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____

Date

Signature of Server

Address of Server

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

1 DONALD A. CARR
Acting Assistant Attorney General

2 ROBERT FOSTER
3 Environmental Enforcement Section
Lands and Natural Resources Division
4 U.S. Department of Justice
P.O.Box 7611, Ben Franklin Station
5 Washington, D.C., 20044
(202) 633-1448

6 WARREN DERBIDGE
7 Assistant U.S. Attorney
Rm. 328 Federal Bldg., Box 037
8 550 W. Fort Street
Boise, Idaho 83724
9 (208) 334-1211

10 ATTORNEYS FOR PLAINTIFF

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE DISTRICT OF IDAHO

13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 WARREN BINGHAM; GEORGE W.)
DREXLER, THOMAS DREXLER; and)
17 W. ALAN PICKETT, Defendants.)

CIVIL NO. 88 - 3011

JUDGMENT AGAINST DEFENDANTS
GEORGE W. DREXLER, THOMAS
DREXLER AND W. ALAN PICKETT

18
19 It appearing from the records and files in this cause that
20 Defendants George W. Drexler, Thomas Drexler, and W. Alan Pickett
21 have failed to plead and file an answer herein and that they have been
22 defaulted; and it further appearing that they have failed to pay the
23 United States Environmental Protection Agency ("U.S. EPA")
24 administrative civil penalty order ("Penalty Order") adjudicating
25 civil penalties against them; and it appearing that as of June 22,
26 1989 there was due, owing, and unpaid from the said Defendants,

1 jointly and severally, on the said Order to the United States the
2 principal sum of \$4,500.00 plus \$1,417.50 interest to June 22, 1989.

3 It is ORDERED AND ADJUDGED as follows:

4 1. The Plaintiff shall have and recover, and is hereby
5 granted, judgment against the Defendants George W. Drexler a/k/a
6 "Wally" Drexler, Thomas Drexler, and W. Alan Pickett, jointly and
7 severally, in the sum of \$_____ together with the Plaintiff's
8 costs and disbursements herein to be taxed by the Clerk; and

9 2. It is here determined pursuant to Rule 54 of the
10 Federal Rules of Civil Procedure ("FRCP") that there is no just reason
11 why a delay should occur in the entry of this judgment and express
12 direction is hereby given that this separated judgment shall be
13 entered and the same is hereby severed from the remaining and ongoing
14 proceedings in this cause regarding the remaining Defendant Warren
15 Bingham.

16 IT IS SO ORDERED.

17 Dated: _____, 1989.

18 _____
19 United States District Judge
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1 DONALD A. CARR
Acting Assistant Attorney General

2 ROBERT FOSTER
3 Environmental Enforcement Section
4 Lands and Natural Resources Division
5 U.S. Department of Justice
6 P.O.Box 7611, Ben Franklin Station
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8 (202) 633-1448

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10 Assistant U.S. Attorney
11 Rm. 328 Federal Bldg., Box 037
12 550 W. Fort Street
13 Boise, Idaho 83724
14 (208) 334-1211

15 ATTORNEYS FOR PLAINTIFF

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE DISTRICT OF IDAHO

18 UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 WARREN BINGHAM; GEORGE W.
22 DREXLER; THOMAS DREXLER; and
23 W. ALAN PICKETT, Defendants.

CIVIL NO. 88 - 3011

MOTION FOR DEFAULT AGAINST
GEORGE W. DREXLER, THOMAS DREXLER,
AND W. ALAN PICKETT

24 Plaintiff, United States of America, by its undersigned attorneys
25 and at the request of the Administrator of the United States
26 Environmental Protection Agency ("U.S. EPA"), moves for an Order of
27 Default against the Defendants George W. Drexler, Thomas Drexler, and
28 W. Alan Pickett, pursuant to Rule 55 of the Federal Rules of Civil
Procedure ("FRCP").

Although duly served with the Complaint Summonses, the
Defendants have not pleaded nor answered the Complaint and the

1 Plaintiff is entitled to an Order of Default and, thereafter, a
2 Judgment by Default against them.

3 This Motion is based upon the records and files in this cause and
4 the Affidavit of Monica Kirk, Assistant Regional Counsel, U.S. EPA.

5 Dated: _____

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7 _____
8 Of Attorneys For Plaintiff
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1 DONALD A. CARR
Acting Assistant Attorney General

2 ROBERT FOSTER
3 Environmental Enforcement Section
4 Lands and Natural Resources Division
5 U.S. Department of Justice
6 P.O.Box 7611, Ben Franklin Station
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Boise, Idaho 83724
(208) 334-1211

10 ATTORNEYS FOR PLAINTIFF

11
12 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 WARREN BINGHAM; GEORGE W.
17 DREXLER, THOMAS DREXLER; and
18 W. ALAN PICKETT, Defendants.

CIVIL NO. 88 - 3011

ORDER OF DEFAULT AS TO
GEORGE W. DREXLER, THOMAS
DREXLER, AND W. ALAN PICKETT

19
20 Plaintiff having moved therefor under Rule 55 of the Federal
21 Rules of Civil Procedure ("FRCP"), DEFAULT is hereby made and entered
22 against the defendants GEORGE W. DREXLER, THOMAS DREXLER, and W. ALAN
23 PICKETT for their respective failures to plead and answer the
24 Complaint filed in this cause.

25 Dated: _____, 1989.

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27 _____
CLERK OF U.S. DISTRICT COURT

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DONALD A. CARR
Acting Assistant Attorney General

ROBERT FOSTER
Environmental Enforcement Section
Lands and Natural Resources Division
U.S. Department of Justice
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Washington, D.C., 20044
(202) 633-1448

WARREN DERBIDGE
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550 W. Fort Street
Boise, Idaho 83724
(208) 334-1211

ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

WARREN BINGHAM; GEORGE W.)
DREXLER, THOMAS DREXLER; and)
W. ALAN PICKETT, Defendants)

CIVIL NO. 88 - 3011

AFFIDAVIT FOR DEFAULT AS
TO GEORGE W. DREXLER,
THOMAS DREXLER, AND W. ALAN
PICKETT

UNITED STATES OF AMERICA)
STATE OF WASHINGTON) ss.
COUNTY OF KING)

I, the undersigned affiant, first being duly sworn, upon oath,
depose and say:

1. I am one of the Attorneys for the United States
handling this matter, and I make this affidavit to enable the Court to

AFFIDAVIT FOR ORDER OF DEFAULT AND DEFAULT JUDGMENT

1 enter an Order of Default against the Defendants George W. ("Wally")
2 Drexler, Thomas Drexler, and W. Alan Pickett, ("Defendants") and to
3 thereafter enter a separate money judgment, jointly and severally,
4 against these three Defendants.

5 2. None of the three Defendants is a minor or an
6 incompetent person and I have personally inquired about that from
7 persons who have dealt with one or more of the said three Defendants.

8 3. The remaining Defendant, Warren Bingham, has filed an
9 Answer to the Complaint and no default or other relief is sought by
10 this Motion against him.

11 4. The Plaintiff asserts a separate claim in the Complaint
12 against the Defendants mentioned in paragraph 1 based upon Defendants'
13 failure to comply with an administrative civil penalty order ("Penalty
14 Order") issued by Administrative Law Judge Yost on October 21, 1985.
15 The Penalty Order is appended as Exhibit 3 to the Complaint.

16 5. Exhibit 3 (exclusive of marginalia and underscoring by
17 pen) is a true and correct copy of the Penalty Order which that
18 exhibit depicts. The original Penalty Order is in the possession of
19 the U.S. EPA Regional Hearing Clerk, Region 10. I have compared the
20 original Penalty Order with Exhibit 3 and they have the same text.

21 6. This Affidavit also supports Plaintiff's Motion, which
22 is made pursuant to Rules 54(b) and 42 of the Federal Rules of Civil
23 Procedure ("FRCP"), that a separate judgment be entered in this cause
24 against the three Defendants, George W. Drexler, Thomas Drexler, and
25 W. Alan Pickett.

1 7. There is no just reason for any further delay in the
2 entry of judgment against the three Defendants who have failed to
3 plead in this cause.

4 8. The Penalty Order against the three Defendants George
5 W. Drexler, Thomas Drexler, and W. Alan Pickett, is in the principal
6 sum of \$4,500, which was payable on December 21, 1985. I have
7 personally reviewed the U.S. EPA Regional Hearing Clerk's files and
8 there is no record of any amount having been paid pursuant to the
9 Penalty Order. Interest on the said EPA order for \$4,500 began to run
10 on December 22, 1985 and has (without compounding) continued to run on
11 the said order and amount at a rate of approximately 9% per annum
12 (i.e., 0.00025 per calendar day, or \$33.75 per month). As of June
13 22, 1989, there was due and owing pursuant to the Penalty Order the
14 sum of \$4,500 principal and \$1,417.50 interest, for a total then of
15 \$5,9170.50.

16
17 DATED: July 10, 1989

Monica Kirk
Monica Kirk
AFFIANT

18
19 SUBSCRIBED AND SWORN TO before me, the undersigned Notary Public, this
20 10th day of July, 1989.

Monica L. Atkinson
Notary Public In and For the State of Wash-
21 ington residing at Seattle. My Commission
22 expires on 2/21/91.

23
24
25
26
27
28 AFFIDAVIT FOR ORDER OF DEFAULT AND DEFAULT JUDGMENT

DONALD A. CARR
Acting Assistant Attorney General

ROBERT FOSTER
Environmental Enforcement Section
Lands and Natural Resources Division
U.S. Department of Justice
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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

v.

WARREN BINGHAM; GEORGE W.
DREXLER; THOMAS DREXLER; and
W. ALAN PICKETT, Defendants.

CIVIL NO. 88 - 3011

CERTIFICATION OF ABSENCE
OF ENTRIES AND RECORDS

I, the undersigned employee and official of the United States Environmental Protection Agency ("U.S. EPA"), Region 10, for the purposes of the Federal Rules of Evidence ("FRE") 803(7), 803(10), and 902, hereby certify as follows:

1. My said employing agency, as part of its regularly conducted activity, makes, keeps and files as a regular practice, the entries and records described in paragraph 3 below. Those are

1 regularly made, kept, and filed in my office as part of the files for
2 which I am one of the custodians.

3 2. I have made a diligent search among the files of my
4 office, and I have inquired of others in my office, and my said search
5 and inquiries disclosed the entries and records described in paragraph
6 3 below are not present in U.S. EPA Region 10 files.

7 3. I would have been one of the recipients and one of the
8 custodians for U.S. EPA of the following entries and records if any
9 such entries and/or records had been made or created in U.S. EPA
10 Region 10 files. The entries and records which are hereby certified to
11 be absent from U.S. EPA Region 10 files, and which are certified to be
12 not filed with or submitted for filing to EPA Region 10, are notes,
13 memoranda, legal pleadings, telephone log sheets, letters, reports,
14 and any documents similar to any of the foregoing, constituting or
15 concerning any of the following:

16
17 Payments of any kind credited against,
18 or submitted to be credited against, the
19 October 21, 1985 U.S. EPA civil penalty order
20 signed and entered by Administrative Law Judge Yost
21 against George "Wally" Drexler, Thomas Drexler,
22 and W. Alan Pickett in proceedings #X-84-04-01 &
23 02-3008 before the Administrator of the U.S. EPA.

24 4. The entries and records described in paragraph 3 have not
25 been filed with or submitted to my office in U.S. EPA Region 10.

26 DATED AT SEATTLE, WASHINGTON, this 10th day of July, 1987.

27 CERTIFYING OFFICIAL:

Marian L. Atkinson
Name: Marian L. Atkinson

Title: REGION 10 REGIONAL HEARING CLERK
U.S. Environmental Protection Agency